

Hon. John C. Coughenour

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STACEY HELLER, TOINETTE ROBINSON,
DAVID RAPP, and CECILY AND
TERRENCE MITCHELL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. CV-07-0453-JCC

MOTION TO CONSOLIDATE RELATED
ACTIONS FOR ALL PURPOSES

[Note on Motion Calendar: June 1, 2007]

Plaintiffs Stacey Heller, Toinette Robinson, David Rapp and Cecily and Terrence Mitchell (collectively "Movants"), by and through counsel, hereby move the Court for an Order consolidating the following actions for all purposes under pursuant to Federal Rule of Civil Procedure 42. Menu Foods does not oppose this motion.

CASE NAME	CASE NO.	JUDGE
<i>Thomas Whaley v. Menu Foods</i>	CV 07-0411 RSM	Hon. Ricardo S. Martinez
<i>Stacey Heller, Toinette Robinson, David Rapp and Cecily and Terrence Mitchell v. Menu Foods</i>	CV 04-0453 JCC	Hon. John C. Coughenour
<i>Audrey Kornelius and Barbara Smith v. Menu Foods</i>	CV 07-0454 MJP	Hon. Marsha J. Pechman

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CASE NAME	CASE NO.	JUDGE
<i>Suzanne E. Johnson and Craig R. Kleeman v. Menu Foods</i>	CV 07-0455 JCC	Hon. John C. Coughenour
<i>Michele Suggett and Don James v. Menu Foods</i>	CV 07-0457 RSM	Hon. Ricardo S. Martinez
<i>Laura Migliore v. Menu Foods</i>	CV 07-0575 RSL	Hon. Robert S. Lasnik
<i>Gail Moran v. Menu Foods</i>	CV 07-0576 JCC	Hon. John C. Coughenour
<i>Sheryl Puett v. Menu Foods</i>	CV 07-0577 RSL	Hon. Robert S. Lasnik
<i>Daniel Ray Reeves v. Menu Foods</i>	CV 07-0634 JCC	Hon. John C. Coughenour
<i>Jeff Rusiecki v. Menu Foods</i>	CV 07-5204 RJB	Hon. Robert J. Bryan
<i>Nancy Guthrie v. Menu Foods</i>	CV 07-5205 RJB	Hon. Robert J. Bryan
<i>Sheree A. Robinson v. Menu Foods</i>	CV 07-0666 RSL	Hon. Robert S. Lasnik
<i>Phyllis A. Ullman v. Menu Foods</i>	CV 07-0667 MJP	Hon. Marsha J. Pechman
<i>Elizabeth Palmer v. Menu Foods</i>	CV 07-0668 JLR	Hon. James L. Robart
<i>Jason Labbate v. Menu Foods</i>	CV 07-0669 MJB	Hon. Monica J. Benton
<i>Megan Whitt v. Menu Foods</i>	CV 07-0670 RSM	Hon. Ricardo S. Martinez
<i>Linda Weitz v. Menu Foods</i>	CV 07-0684 RSM	Hon. Ricardo S. Martinez
<i>Michelle Adams v. Menu Foods</i>	CV 07-0685 JPD	Hon. James P. Donohue
<i>Larae Dineen v. Menu Foods</i>	CV 07-0686 RSM	Hon. Ricardo S. Martinez
<i>Sandra Shingle v. Menu Foods</i>	CV 07-0687 MJP	Hon. Marsha J. Pechman
<i>Gary Thomas v. Menu Foods</i>	CV 07-0688 TSZ	Hon. Thomas S. Zilly
<i>Deborah Mullen v. Menu Foods</i>	CV 07-0689 JLR	Hon. James L. Robart
<i>Helen Percy v. Menu Foods</i>	CV 07-0690 RSL	Hon. Robert S. Lasnik

This motion is brought on the grounds that these actions are substantially identical because each alleges that defendant Menu Foods sold pet food that was not safe for pets to consume. Plaintiffs bring these actions for unjust enrichment, unlawful, deceptive and unfair business practices and breach of warranties, based upon similar factual allegations against the

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1 same defendant. The motion is also brought on the ground that consolidation of these cases will
2 promote efficiency and preserve judicial resources.

3 The motion is based upon the following points and authorities, the Berman Declaration
4 filed herewith, the complete files and records of the related actions and such other written or oral
5 argument as the Court may consider in deciding this motion.

6 I. INTRODUCTION

7 The related class action lawsuits identified above and were brought to remedy the unjust
8 enrichment, unlawful, deceptive and unfair business practices and breach of warranty claims
9 arising out of Menu Foods's sale of pet food that was not safe for consumption. Movants seek to
10 consolidate these related actions pursuant to Fed. R. Civ. P. 42(a). Plaintiffs bring these actions
11 on their own behalf and on behalf of a plaintiff class consisting of all persons who purchased
12 contaminated pet food produced by Menu Foods. Plaintiffs in each action assert substantially the
13 same claims and raise substantially the same questions of law and fact. Thus, consolidation of
14 these actions is appropriate.

15 II. SUMMARY OF ALLEGATIONS

16 Menu Foods is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and
17 cat food sold under familiar brand names such as Iams, Eukanuba and Science Diet. Menu
18 Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart,
19 Kroger and Safeway. Dog and cat food that Menu Foods produced caused an unknown number
20 of dogs and cats to become ill, and many of them to die. To date, Menu Foods has recalled 50
21 brands of dog food and 40 brands of cat food that have sickened animals. As a result of Menu
22 Foods's actions, Plaintiffs and other class members have suffered economic damage. Each
23 Plaintiff has brought claims against Menu Foods for breach of contract; unjust enrichment;
24 unlawful, deceptive and unfair business practices and breach of warranties. These claims are
25 based on virtually identical factual and legal issues and name the same defendant.

III. ARGUMENT

Consolidation pursuant to Fed. R. Civ. P. 42(a) is proper when actions involve common questions of law and fact. *Southwest Marine, Inc. v. Triple A Machine Shop, Inc.*, 720 F. Supp. 805, 806 (N.D. Cal. 1989). The Court has broad discretion under Fed. R. Civ. P. 42(a) to consolidate cases pending within this District. *Investors Research Co. v. U.S. Dist. Court for Cent. Dist.*, 877 F.2d 777 (9th Cir. 1989). Consolidation of related actions is favored. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 724 & n.10 (1966) (“Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.”). The Rule contemplates consolidation to “avoid unnecessary costs or delay.” Fed. R. Civ. P. 42(a). “Actions involving the same parties are apt candidates for consolidation.” 9 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE, § 2384 p. 447.

The objective of consolidation here, as elsewhere, is to promote the economies of joint proceedings, while maintaining the individual cases as separate suits with separate judgments:

[C]onsolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.

Johnson v. Manhattan R. Co., 289 U.S. 479, 496-97 (1933).

Coordination of these actions for all purposes is demonstrably appropriate. Each action involves an alleged breach of contract, unjust enrichment, unlawful, deceptive and unfair business practices and breach of warranties by defendants. The central factual and legal issues presented by these actions are common. Coordination of the cases will expedite proceedings, reduce duplication, avoid the harassment of parties and witnesses and minimize the expenditure of time and money by all parties. Moreover, coordination of these class actions will streamline and simplify pretrial and discovery motions, class certification issues, avoid multiple trials, and generally reduce the inefficiencies that would be brought by prosecuting related cases of this



1 nature separately. Movants request that the cases be consolidated under Civil Action No. CV-
2 04-0453 JCC.

3 In addition, plaintiffs and their counsel anticipate that additional related cases against this
4 defendant involving the same common questions of law and fact will be filed in this District.
5 Movants submit that consolidation of these cases with the cases already filed is also appropriate
6 for the reasons identified herein. Therefore, Movants ask the Court to include the directive that
7 any other related cases subsequently filed in or transferred in this District shall also be
8 consolidated.

9 IV. CONCLUSION

10 For the above reasons, Movants respectfully request that their motion for consolidation
11 be granted. Movants request that the Court issue an order that all related cases currently pending
12 be consolidated under one case number, that all future pleadings should now be filed under the
13 consolidated case number and that all future related cases should be filed under the consolidated
14 case number.

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2 Dated: May 8, 2007.

3 HAGENS BERMAN SOBOL SHAPIRO LLP

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